APPENDIX A

(OPINION OF THE COURT OF APPEALS)

(Filed April 26, 1962)

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16,610.

LUTHER ROBINSON MADDOX,
APPELLANT,

v.

RAYMOND O. SHROYER, et al.,
APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Decided April 26, 1962

Mr. Luther Robinson Maddox, appellant pro se, with whom Mrs. Marie Flynn Maddox was on the brief, for appellant.

Mr. William J. Donnelly, Jr., with whom Mr. Richard W. Galiher was on the brief, for appellee District Supply, Inc. and certain other appellees.

Mr. B. Austin Newton, Jr., for appellee Caraway.

Mr. James E. Hogan for appellee Hilland.

Mr. Ferdinand J. Mack entered an appearance for appellees Raymond O. and Mary K. Shroyer.

Before BAZELON, WASHINGTON and BASTIAN, Circuit Judges.

PER CURIAM:

This is an appeal from the action of the District Court dismissing with prejudice appellant's (plaintiff's) complaint.

When this case reached the pre-trial stage in the District Court, the matter came before Chief Judge McGuire on a motion to transfer the cause to Baltimore to be tried in that city with a substantially similar case involving substantially similar facts against substantially the same parties.[1]

The court denied the motion and advised appellant as follows:

> ". . . . First of all, the pleadings are extremely voluminous and offend every rule in the Rules of Civil Procedure. Your complaint should be concise, condensed and to the point but, in certain instances, the complaint here or the amended complaint runs into pages. The case should be dismissed, actually, for

[1] We are advised that this case in Baltimore has since been tried, decided adversly to appellant, and the decision of the District Court affirmed by the United States Court of Appeals for the Fourth Circuit. *Maddox* v. *Fidelity Investment & Title Co.*, F. 2d

a vicious and grievous violation of the Federal Rules of Civil Procedure. **** This case will be pre-tried on the 16th day of May. That means you will get your pleadings in order and this case will be tried on the first day of June. If you don't get your pleadings in order by the 16th of May—and I will still be the Motions Court—I will dismiss it. I tell you that quite frankly. We are not going to live with this type of litigation . . . . I am directing you to get your pleadings in order. You submit a new complaint of an Amended Character. It should be confined, under the rules, to a fair, condensed, accurate statement of the alleged facts that you rely on. The answer should be the same. I am going to direct the pre-trial Examiner, if this matter is referred to the pretrial Examiner on the 16th day of May, as it will be, if the pleadings do not conform, I will dismiss the case."

Some two months later, on April 18, 1961, the Court entered an order, containing, among other things, the following:

"The Court having reviewed the file in this cause, and having noted that the same has been pending since 1957; that the record in this cause consists (of) three lengthy volumes; that on March 11, 1959 this Court noted—'This case is one of the causes of court congestion which we are finally beginning to catch up with . . .'; and that the plaintiff's pleadings do not conform with the spirit and letter of the Federal Rules of Civil Procedure, it is by the Court this 18th day of April, 1961,

"ORDERED, that this cause of action is to be pre-

tried on May 16, 1961, and thereafter set for trial on June 1, 1961.

"IT IS FURTHER ORDERED, that the plaintiff is hereby directed to have his pleadings comply with the requirements of the Federal Rules of Civil Procedure at the time of pre-trial, and that, if the pleadings have not been placed in proper posture by that time, this cause will be dismissed with prejudice."

On May 16 the case again came before Chief Judge McGuire as, up to that time, appellant had evidenced no effort whatsoever to comply with the court's order. Thereupon, the court entered a further order directing appellant to file an amended complaint within ten days from May 16, 1961, and, upon failure to do so, providing that the case be dismissed with prejudice. The ten days granted by this latter order having expired and appellant having failed to comply with the directions of the court, the court, on June 1, 1961, entered the order appealed from and dismissed the cause with prejudice.

While dismissal for failure to comply with the Rules is a seemingly severe sanction, nevertheless we think that the court in this case was amply justified in the action which it took, particularly in view of the flagrant refusal of appellant to follow the sound and proper directions of the District Court. Cf. *Condol* v. *Baltimore & O. R. Co.*, 91 U. S. App. D.C. 255, 199 F. 2d 400 (1952); *McCann* v. *Clark*, 89 U.S. App. D.C. 166, 191 F. 2d 476 (1951).

The judgment of the District Court is affirmed.

Affirmation of the judgment renders moot the other questions raised by appellant.

Affirmed.

APPENDIX B

(ORDER OF JUDGE McGUIRE, R. 21)

* * *

(FILED FEB. 19, 1959)

This cause having come on to be heard on the motion of B. Austin Newton, Jr., attorney for defendant J. Lewey Caraway, to continue the taking of his, B. Austin Newton, Jr.,'s deposition from 10 a.m. February 14, 1959, to 10 a.m. February 21, 1959, and it appearing to the Court that this cause was filed in the month of May, 1957, it is by the Court, this 18th day of February, 1959, ORDERED that the motion to continue the taking of the Deposition of B. Austin Newton, Jr., from 10 a.m. February 14, 1959, to 10 a.m. February 21, 1959, be and the same is hereby granted.

IT IS FURTHER ORDERED that this cause is to be certified as ready for trial not later then April 15, 1959, and all discovery procedures are to be completed in this cause by that time.

/s/ MATTHEW F. McGUIRE, *Judge*

(ORDER OF JUDGE McGUIRE, R. 24, 25)

* * *

(FILED April 18, 1961)

Upon consideration of the Plaintiff's motion to transfer this cause to the United States District Court in Baltimore, Maryland, or alternately, to stay this cause pending disposition of a related cause in the United States District Court in Baltimore, Maryland, and the plaintiff's motion for judgment by default against the District Supply, Inc., it is by the Court this 18th day of April, 1961, ORDERED, that the foregoing Motions be and the same hereby are denied.

Upon consideration of the witness Austin Carlin's Motion to quash service of the subpoena upon him for the purpose of taking his deposition, it is by the Court this 18th day of April 1961, ORDERED, that the witness Carlin's Motion be denied without prejudice.

The Court, having reviewed the file in this cause, and having noted that the same has been pending since 1957; that the record in this cause consists (of) three lengthy volumes; that on March 11, 1959, this Court noted—"This case is one of the causes of court congestion which we are finally beginning to catch up with . . ."; and that the plaintiff's pleadings do not conform with the spirit and letter of the Federal Rules of Civil Procedure, it is by the Court this 18th day of April, 1961, ORDERED, that this cause of action is to be pre-tried on May 16, 1961, and thereafter set for trial on June 1, 1961.

IT IS FURTHER ORDERED, that the plaintiff is

hereby directed to have his pleadings comply with the requirements of the Federal Rules of Civil Procedure at the time of pre-trial, and that, if the pleadings have not been placed in proper posture by that time, this cause will be dismissed with prejudice.

/s/ MATTHEW F. McGUIRE, *Judge*

(See p. 12, Tr. of Pro. 4/11/61. Also, Local Rule 12, O/R) (and R. 8-20)

(ORDER OF JUDGE McGUIRE, R. 26, 27)

* * *

(Filed May 26, 1961)

Upon consideration of the defendant Elmer L. Young's motion to vacate the default judgment entered against him on May 3, 1958, the points and authorities in support of the motion, the affidavit of Richard W. Galiher, and the plaintiff's opposition to the motion filed on May 22, 1961, ORDERED that the motion to vacate the default judgment entered against the defendant Elmer L. Young is granted, and further ORDERED that the verified answer signed by the defendant Elmer L. Young and attached with a motion to vacate the default judgment against him may be filed forthwith this 26th day of May, 1961.

/s/ MATTHEW F. McGUIRE, *Judge*

(NOTE: This order was signed before Plaintiff received a copy) . . . . (See Certificate of Service) . . . O/R

(ORDER OF JUDGE McGUIRE, R. 28)

* * *

(Filed June 1, 1961)

It appearing of record this 1st day of June, 1961, that the plaintiff has not filed amended pleadings pursuant to the Orders of this Court dated April 18, 1961, and May 25, 1961, it is ORDERED that the plaintiff's cause of action against all the defendants herein is dismissed with prejudice.

/s/ MATTHEW F. McGUIRE, *Judge*

(ORDER OF JUDGE McGUIRE, R. 34)

* * *

(Filed May 25, 1961)

This cause having come on for pre-trial on May 16, 1961, and the question of the plaintiff's failure to file amended pleadings as directed by this Court's order of April 18, 1961, having been submitted to the Motions Court in absence of the pre-trial Judge, it is by the Court, this 25th day of May, 1961,

ORDERED and DIRECTED that the plaintiff file an amended complaint to conform with the spirit and letter of the Federal Rules of Civil Procedure, within ten days from May 16, 1961, and upon failure to so do this cause will be dismissed with prejudice.

/s/ MATTHEW F. McGUIRE, *Judge*

(See R. 14-20 and O/R, Tr. Pro. 5/16/61)

(ORDER OF JUDGE McGUIRE, R. 34)

* * *

(Filed June 28, 1961)

This cause having come on to be considered on June 21, 1961, on the plaintiff's motion to vacate and set aside the final order and judgment of June 1, 1961, dismissing this action against all of the defendants herein, and/or for further and other relief, and after due consideration thereof it is by the Court this 27th day of June, 1961, ORDERED that the plaintiff's motion be, and the same is hereby denied.

/s/ MATTHEW F. McGUIRE, *Judge*

APPENDIX C

(ORDER OF JUDGE CURRAN, R. 77)

* * *

(Filed July 30, 1958)

This action came on for hearing on June 23, 1958, upon the motion of the plaintiff for an order directing the defendant Arthur J. Hilland to answer interrogatories served upon him, and upon the motion of Arthur J. Hilland to dismiss, and thereupon, upon consideration thereof, and after oral argument of counsel, it is by the Court, this 21st day of July, 1958, ORDERED, that the motion of the

plaintiff for an order directing the defendant Arthur J. Hilland to answer interrogatories served upon him be, and hereby is, denied; that the motion of the defendant Arthur J. Hilland to dismiss be, and the same is, hereby granted, with leave to plaintiff to amend within 10 days.

/s/ EDWARD M. CURRAN, *Judge*

(Certificate of Mailing shows "1st day of July 1958" by Mr. Mack, see O/R)

(ORDER OF JUDGE CURRAN, R. 78, 79)

* * *

(Filed September 15, 1959)

This action came on for hearing upon the motion of the additional defendant Arthur J. Hilland to dismiss the amended count as to Arthur J. Hilland and added as ninth count and to dismiss the amended eighth count as to the defendant Arthur J. Hilland, and thereupon, upon consideration thereof and after argument of counsel, it is by the Court, this 15th day of September, 1959, ORDERED, that the motion of the additional defendant Arthur J. Hilland to dismiss the amended count as to Arthur J. Hilland and added as the ninth count, and to dismiss the amended eighth count as to Arthur J. Hilland be, and the same hereby is, granted.

/s/ EDWARD M. CURRAN, *Judge*

(SERVICE CERTIFICATE SHOWS 21st DAY OF JULY, 1959—SEE O/R)

APPENDIX D

(ORDER OF JUDGE PINE, R. 96, 97)

* * *

(Filed December 10, 1958)

Upon consideration of the motion for leave to file a supplemental complaint in Counts Ten and Eleven as Section Nine hereof, and to add two defendants, Ferdinand J. Mack and William J. Donnelly, Jr., as defendants Nos. 15 and 16, it is by the Court, this 10th day of December, 1958, ORDERED, that the same be and is hereby denied.

/s/ DAVID A. PINE, *Judge*

(ORDER OF JUDGE PINE, R. 96, 115)

* * *

(Filed June 26, 1959)

Upon consideration of plaintiff's motion filed herein on December 20, 1958, and submitted to this Court on April 4, 1959, "to vacate and set aside order of December 10, 1958," and "to reconsider ruling and finding of November 20, 1958" or in the alternative, to "sign proposed order attached hereto allowing Plaintiff right to have said order and ruling reviewed by the Court of Appeals, "it is by the Court this 26th day of June, 1959, pursuant to the decision of this Court of April 6, 1959,

ORDERED, that said motion be and the same is hereby denied.

/s/ DAVID A. PIXE, *Judge*

APPENDIX E

(ORDER OF JUDGE HART: R. 40, 71)

* * *

(Filed June 29, 1960)

The matter came on to be heard before the Court on June 28, 1960, on motion of the plaintiff for "An Order Directing Richard W. Galiher, F. Archie Meatyard, Jr., Arthur J. Hilland, Benjamin W. Guy, 2d, Ferdinand J. Mack, and others, As Shown Below, to Answer Certain Questions, As Witnesses in the Above-Entitled Cause, Fully and Responsively, in Accordance with Rule 26 and 33, Federal Rules of Civil Procedure; and/or For Such Other and Further Relief as Justice and the Law Construing Those Rules May Require, and it appearing to the Court that the questions which the plaintiff seeks to have answered call for information which is either irrelevant or privileged as a result of the attorney-client relationship, it is by the Court, this 29th day of June, 1960, ORDERED that the motion be, and the same hereby is, denied.

/s/ GEORGE L. HART, JR., *Judge*

Copy mailed to: (June 29, 1960)

Luther Robinson Maddox
Woodward Building.
Washington, D.C.

Attorney for Plaintiff /s/ James E. Hogan

(ORDER OF JUDGE HART, R. 46-71)

* * *

(Filed August 10, 1960)

Upon consideration of the plaintiff's motion to vacate and set aside the order and judgment of this Court, dated June 29, 1960, denying his motion for an order directing certain witnesses to answer questions which they refused to answer upon oral examination, and for such other and further relief as justice might require and for a reconsideration and an oral hearing thereon, it is by the Court, this 10th day of August, 1960, ORDERED that the Plaintiff's motion be, and the same hereby is, denied.

/s/ GEORGE L. HART, JR., *Judge*

APPENDIX F

(ORDER OF JUDGE HOLTZOFF, R. 115)

* * *

(Filed November 6, 1959)

The motion of the plaintiff for an order, in the above-entitled cause, to direct Witness Owen E. Osborne to

answer certain questions he refused to answer upon the taking of his deposition on August 31, 1959, by the plaintiff, and said motion having come on for a hearing and having been considered by the Court on November 2, 1959, it is this 6 day of November, 1959, ORDERED:

(1) That the motion of the plaintiff be, and hereby is, continued to Friday, November 20, 1959; and, (2) It is further ordered that the Witness Owen E. Osborne appear in this court on Friday, November 20, 1959, at 10:00 A.M., to show cause why he should not answer the questions set forth in plaintiff's motion, copy of which was served upon said Witness under date of September 25, 1959, by mail, if cause can be shown by him.

/s/ ALEXANDER HOLTZOFF, *Judge*

(MEMORANDUM OF JUDGE MATTHEWS, R. 115, 116)

* * *

(Filed December 28, 1959)

The matter before the court is plaintiff's "motion for an order directing witness Owen E. Osborne to answer certain questions he refused to answer on oral examination." The motion will be denied. Annotated Code of Maryland, Vol. 4, 1957 Edition, Art. 35, Section 13. Mullen v. U.S. decided December 4, 1958 by the United States Court of Appeals for the District of Columbia Circuit. See statement of Judge Fahy concurred in by Judge Edgerton, filed January 29, 1959.

/s/ BURNITA SHELTON MATTHEWS, *Judge*

December 28, 1959.

(ORDER OF JUDGE MATTHEWS, R. 116)

* * *

(Filed March 14, 1960)

Upon consideration of the motion entitled "Motion for an order directing witness Owen E. Osborne to answer certain questions", etc., filed herein September 26, 1959, the opposition thereto, and counsel having argued the matter in open court on November 20, 1959, and the Court having filed herein on December 28, 1959, a memorandum pertaining to said motion, and upon consideration of so much of plaintiff's motion filed herein March 12, 1960, as seeks an amendment of said memorandum, it is by the Court this 14th day of March, 1960: ORDERED that said motion filed herein September 26, 1959, for an order directing Owen E. Osborne to answer certain questions be and the same is hereby denied and that the rule to show cause against the said Osborne incorporated in the order herein of November 6, 1959, be and the same is hereby discharged, and it is further ORDERED that so much of plaintiff's motion of March 12, 1960, as seeks an amendment of the aforesaid memorandum of the Court be and the same is hereby denied.

/s/ BURNITA SHELTON MATTHEWS, *Judge*

(Filed March 12, 1960)

PLAINTIFF'S MOTION TO AMEND MEMORANDUM OPINION OF DECEMBER 28, 1959, AND/OR FOR OTHER AND FURTHER RELIEF (R. 116, 117—See O/R)

Plaintiff moves the Court: (1) To amend its Memorandum Opinion of December 28, 1959, to make the first paragraph read: "The matter before the court is Plaintiff's Motion for an order directing witness Owen E. Osborne to answer certain questions he refused to answer upon an oral examination and pursuant to a Rule of this Court under date of November 6, 1959 (Holtzoff, J.) for the said Osborne to show cause why he should not answer the questions set forth in Plaintiff's Motion, filed in this cause on September 25, 1959."

And to add to second paragraph, at the beginning, "And the matter came on for a hearing and argument in open court on Friday, November 20, 1959, with the said Osborne present and his counsel (H. Dawson Penniman of Baltimore, Maryland), appearing specially, and the said Motion ~~having been~~ having been argued by counsel on that date and taken under advisement by the Court, the Motion will be denied and the Rule quashed."

* * *

APPENDIX G

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* * *

(ORDER OF JUDGE HOLTZOFF, R. 117, 118)

(Filed October 16, 1957)

The motions of the defendants, District Supply, Inc., Charles Visek, Individually, and as President thereof (defendants number 5 and 6), and J. Lewey Caraway (defendant number 3), to dismiss the complaint filed in the about-entitled cause, came on for a hearing on October 8, 1957, and upon consideration thereof by the Court, it is this 16 day of October, 1957, ORDERED:

1. That the Motion of the District Supply, Inc., and Charles Visek, its President, both individually and as President thereof (defendants number 5 and 6) to dismiss the complaint filed herein, be, and hereby is, denied; 2. That the Motion of J. Lewey Caraway (defendant number 3) to dismiss the complaint filed herein, or in the alternative to grant summary judgment, be, and hereby is, denied.

/s/ ALEXANDER HOLTZOFF, *Judge*

(See pp. 17-26, Tr. Pro. 10/8/57)
O/R

(ORDER OF JUDGE HOLTZOFF, R. 118)

* * *

(Filed November 4, 1957)

The motion of the defendant Number 3, J. Lewey Caraway, to strike the Amended Complaint of the Plaintiff, *filed in the above-entitled cause, came on for hearing on* October 29, 1957, and upon consideration by the Court,

it is this 4th day of November, 1957, ORDERED: (1) That the motion of the defendant J. Lewey Caraway to strike the Amended Complaint of Plaintiff filed herein be, and hereby is, denied; and (2) Further, that the defendant, J. Lewey Caraway, be, and hereby is, granted ten (10) days within which to answer the Plaintiff's Amended Complaint.

/s/ ALEXANDER HOLTZOFF, *Judge*

(See pp. 24, Tr. Pro. 10/29/57)
O/R

(Filed October 24, 1957)

ANSWER OF DEFENDANTS, DISTRICT SUPPLY, INC., AND CHARLES VISEK, TO AMENDED COMPLAINT (SEE O/R and R. 118)

(Filed November 6, 1957)

ANSWER OF DEFENDANT CARAWAY TO THE AMENDED COMPLAINT (SEE O/R and R. 118)

(FILED APRIL 28, 1958)

ANSWER OF DEFENDANTS, STANLEY VISEK, PORRECA, AND SMITH, INDIVIDUALLY AND IN THEIR DESIGNATED CAPACITIES (SEE O/R and R. 119)

(ORDER FOR DEFAULT JUDGMENT AGAINST ELMER L. YOUNG (R. 119))

(Filed May 3, 1958)

Upon oral motion of the plaintiff herein for an Order Pro Confesso against one of the defendants in the above-entitled cause, pursuant to Rule 55(b)(2) FRCP; and it appearing that the defendant Elmer L. Young was served on April 11, 1958, personally, in Washington, D. C., by the Marshal of this Court with a copy of the complaint and a summons to answer within twenty days from said date, and serve a copy thereof on the plaintiff or his attorney within that period; and it further appearing that the said defendant Young has not done so, but has defaulted; and it appears further that the said defendant has not been granted an extension of time within which to plead or serve an answer thereto, it is this 3d day of May, 1958, ORDERED:

(1) That the motion of the plaintiff be, and hereby is, granted; and,

(2) That the Clerk of this Court will, and is hereby so directed, to enter a default Pro Confesso judgment, as set forth in Count Seven of the complaint herein; subject to proof of amount of damages, to be determined at the trial hereof, or at an earlier hearing for that purpose as may be directed by this Court, against the defendant Elmer L. Young, Individually; and as General Manager and Director of the District Supply, Inc.

/s/ R. W. KEECH, *Judge*

APPENDIX H

(Filed March 4, 1959)

MOTION TO FIX NEW TIME AND PLACE FOR TAKING OF DEPOSITION (OF DEFENDANTS SHROYER, R. 39)

Defendants Raymond O. Shroyer and Mary K. Shroyer respectively move the Court to order that their depositions, now scheduled to be taken March 7, 1959, at ten o'clock, a.m. and two-thirty o'clock, p.m. respectively in Baltimore, State of Maryland, be rescheduled to be taken on Tuesday, March 10, 1959, at ten o'clock a.m. and two-thirty o'clock, p.m. respectively, at any location within Washington, District of Columbia, and assert grounds in support thereof as follows: 1. It would suit the convenience of the deponents for the depositions to be taken March 10, 1959, within the District of Columbia. 2. All counsel of record maintain offices within Washington, District of Columbia. 3. And for such other and further reasons as may be urged upon oral hearing hereof.

/s/ FERDINAND J. MACK
Attorney for defendants Raymond O. Shroyer and Mary K. Shroyer

NOTICE OF MOTION

Please take notice that the above-entitled motion will be brought on for hearing before Judge Matthew F. McGuire

of the United States District Court for the District of Columbia, at ten o'clock, a.m. on March 5, 1959.

/s/ FERDINAND J. MACK

(See O/R)

(ORDER OF JUDGE McGUIRE, R. 40)

* * *

(Filed March 11, 1959)

This cause having come on to be heard on the motion of the defendants Raymond O. Shroyer and Mary K. Shroyer to continue the taking of their depositions upon an oral examination, set for March 7, 1959, at ten o'clock a.m., and two-thirty o'clock, p.m., respectively, in Baltimore, Maryland, and for rescheduling of said examination in Washington, District of Columbia, on Tuesday, March 10, 1959, and said motion having been considered by the Court, as a preliminary matter, it is this 11th day of March, 1959, ORDERED: That the motion of the defendants Raymond O. Shroyer and Mary K. Shroyer to continue the taking of their deposition upon an oral examination, set for March 7, 1959, and a rescheduling of said date for an examination, be and hereby is, denied.

/s/ MATTHEW F. McGUIRE, *Judge*

(SEE PLAINTIFF'S MOTION TO CONTINUE AND RESCHEDULE NOTICE AND DATE FOR TAKING DEPOSITIONS OF RAYMOND O. SHROYER AND MARY K. SHROYER AS WITNESSES FOR PLAINTIFF, ETC. (FILED MARCH 19, 1959)—IN

MARGIN: "DENIED 3/19/59. McGUIRE, J.")—SEE O/R. and R. 41.

* * *

(ORDER OF JUDGE McGUIRE, R. 41)

* * *

(Filed March 19, 1959)

The motion to consider and reschedule notice for taking of deposition of Raymond O. Shroyer and Mary K. Shroyer as witnesses for the Plaintiff upon an oral examination, filed March 19, 1959, and served upon opposing counsel March 18, 1959, having been called to the Court's attention as a preliminary matter, and argument by movant having been heard, it is by the Court this 19th day of March, 1959, ORDERED, That the motion to continue and reschedule Notice and date for taking of depositions of Raymond O. Shroyer and Mary K. Shroyer as witnesses for Plaintiff upon an oral examination be and the same is hereby denied.

/s/ MATTHEW F. McGUIRE, *Judge*

(ON LETTERHEAD OF MADDOX)—R. 40, see O/R.

* * *

April 2, 1959

Dear Judge McGuire:

Referring to the Order of Denial of Plaintiff's motion, dated March 19, 1959, and entered of record on same date, requesting continuance and rescheduling of Notice

to take depositions of Raymond O. Shroyer and Mary K. Shroyer, and for other relief, it is requested that Your Honor place in the record of this case your reasons for such denial; for it is believed that it may be material and important to Plaintiff in any further proceedings he may have or take in the United States District Court for the District of Maryland in connection with the depositions of the said Shroyers.

Respectfully yours,

/s/ LUTHER ROBINSON MADDOX

(Filed April 1, 1959)

MOTION OF RAYMOND O. SHROYER AND MARY K. SHROYER FOR PROTECTION OF DEPONENTS

(R. 41, 42, and see O/R)

Raymond O. Shroyer and Mary K. Shroyer, proposed deponents herein, move the Court, for their protection, to order that their depositions which have been noted herein, tentatively for April 4, 1959, not be taken, and assert grounds in support thereof as follows: 1. In response to subpoenas served upon them, Raymond O. Shroyer and Mary K. Shroyer responded to have their depositions taken on March 7, 1959, at ten o'clock, a.m. and two-thirty o'clock p.m., respectively, accompanied by counsel. At that time Plaintiff, pro se, took only a limited deposition of each of the witnesses and terminated the depositions. 2. Subsequent to the depositions taken on March 7, 1959, Mr. Maddox moved to continue those depositions and to reschedule those depositions. By order of this Court dated March 19, 1959, Mr. Maddox's motion to continue and

reschedule the depositions of Raymond O. Shroyer and Mary K. Shroyer was denied. 3. On March 24, 1959, counsel for Raymond O. Shroyer and Mary K. Shroyer wrote the Honorable W. Calvin Chesnut, Judge, United States District Court for the District of Maryland, a copy of said letter being attached hereto and made a part hereof and designated Exhibit A. 4. Further depositions of Raymond O. Shroyer and Mary K. Shroyer constitute oppression, abuse of the rules of discovery of the Federal Rules of Civil Procedure and impose unwarranted hardship upon the prospective deponents.

/s/ FERDINAND J. MACK

(SEE OPPOSITION OF PLAINTIFF FOR PROTECTIVE ORDER OF SHROYERS, AND FOR OTHER RELIEF, FILED APRIL 7, 1959)—See R. 42 and O/R

(ORDER OF JUDGE HOLTZOFF, R. 42, 43)

* * *

(Filed April 28, 1959)

The motion of Raymond O. Shroyer and Mary K. Shroyer, for a protective order that their depositions, set for April 4, 1959, not be taken, came on for a hearing and argument in open court, and upon consideration thereof, it is this 28th day of April, 1959, ORDERED: 1. That the Motion of Raymond O. Shroyer and Mary K. Shroyer for a protective order be, and hereby is, denied; and, 2. It is further ordered and directed that the depositions of Mary K. Shroyer and Raymond O. Shroyer will proceed at the designated place in NOTICE and subpoena served upon them on March 30 and 31st, respectively.

1959, on Saturday, May 2, 1959 at 10 A.M.

/s/ ALEXANDER HOLTZOFF, *Judge*

(See Copies of Depositions in O/R)

Mary K. and Raymond O. Shroyer)

(Self-explanatory)

(SEE PLAINTIFF'S MOTION FOR ADJUDICATION IN CONTEMPT RAYMOND O. SHROYER AND MARY K. SHROYER, WITH EXHIBITS, FILED JUNE 10, 1959—NO OPPOSITION FILED—SEE O/R)

APPENDIX I

THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES provides:

"No person shall be * * * deprived of life, liberty or property without due process of law;" * * *

FEDERAL RULES OF CIVIL PROCEDURE:

Rule 1. Scope of Rules. These rules govern * * * They shall be construed to secure the just, speedy, and inexpensive determination of every action.

Rule 8. * * * (f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

Rule 16. Pre-Trial Procedure; Formulating Issues. In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider (1) The simplification of the issues; (2) The necessity or desirability of amendments to the pleadings; (3) The possibility of obtaining admissions of facts and of documents which will avoid unnecessary proof; * * * (6) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleading, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration * * *

Rule 26. Depositions Pending Action. (a) * * * Any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the cation or for both purposes. * * * The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. * * * (b) * * * Unless otherwise ordered by the court as provided by Rule 30 (b) or (d), the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. * * * It is not ground for objection that the testimony will be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

Rule 33. * * * Any party may serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a * * * private corporation or a partnership * * *, by any officer or agent, who shall furnish such information as is available to the party. * * * The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within fifteen days after the service of the interrogatories, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time. Within 10 days after service of interrogatories a party may serve written objections thereto with a notice of hearing the objections at the earliest practical time. * * * Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the same extent as provided in Rule 26(d) for the use of depositions of a party. * * * The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression. * * *

Rule 34. * * * Upon motion of any party showing good cause therefor and upon notice to all other parties, and subject to the provisions of Rule 30(b), the court in which an action is pending may (1) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things not privileged, which constitute or contain evidence relating to any of the matters within the scope of the examination permitted

by Rule 26(b) and which are in his possession, custody or control; * * *

Rule 38. Jury Trial of Right. (a) * * * The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a Statute of the United States shall be preseved to the parties inviolate.

Rule 36. Admissions of Facts and of Genuineness of Documents. (a) Request for Admission. After a commencement of an action a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth in the request. * * * Copies of the documents shall be served with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than ten days after service thereof or within such shorter or longer time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or, (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part, together with a notice of hearing the objections at the earliest practicable time. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested ad-

mission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder.

Rule 45. Subpoena. * * * (d)(L) * * * The subpoena may command the person to whom it is directed to produce designated books, papers, documents, or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26(b), but * * *

(b) * * * but the court upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith may (1) quash or modify the subpoena * * *.

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

Rule 83. Rules by District Courts. Each District Court by action of a majority of the judges thereof may from time to time make and amend rule governing its practice not inconsistent with these rules. Copies of rules and amendments so made by any District Court shall upon their promulgation be furnished to the Supreme Court of the United States. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.

LOCAL RULES IN EFFECT ON JUNE 1, 1961 (R. 37, 38)

(Also see R. 14-20)

* * *

(Holding an Executive Session, Filed January 29, 1960)

ORDER

It is, by the Court, this 29th day of January, 1960, ORDERED That Local Civil Rule 12, subparagraph (b), be and the same is amended to read as follows:

(b) FAILURE TO APPEAR OR TO FILE PRE-TRIAL STATEMENT.

If counsel for any party fails to appear when an action is reached in any call of the pretrial calendar before the Pretrial Judge, he may act as in case of non-appearance for final trial. If counsel for plaintiff fails to appear at the time set for pretrial hearing before the Pretrial Examiner, the Examiner shall enter the case dismissed for want of prosecution. If counsel for the *defendant fails to appear at the time set for pretrial hearing before the Pretrial Examiner, the examiner shall enter his default. If any party fails to file with the Pretrial Examiner timely his pretrial statement, the Examiner shall act as provided in the case of failure to appear for the pretrial hearing.*

It is further ORDERED That Rule 12 be and the same is hereby further amended by adding the following new paragraphs:

(f) PRETRIAL ORDER. The pretrial order when signed by counsel and by the Pretrial Examiner or Assistant Pretrial Examiner shall become the order of the court unless, within five days from the date of said order, counsel for any party files with the Clerk of the Court written objections thereto.

(g) OBJECTIONS TO EXAMINER'S ORDER. In the event objections to the pretrial order as signed by the Pretrial Examiner or Assistant Pretrial Examiner are filed timely, the matter shall be set down for hearing before the Pretrial Judge to determine whether the order of said Examiner should be approved as drafted; whether it should be approved by the court with amendments, or whether a new pretrial order should be entered by the court.

(h) PRETRIAL PROCEEDINGS. Hearings before the Pretrial Examiner and Assistant Pretrial Examiner shall be conducted pursuant to the "Pretrial Instructions to Counsel" approved by the Court; as they may be amended from time to time.

(i) REQUESTS FOR STIPULATIONS. Requests for stipulations as to matters of fact or the genuineness of documents presented at pretrial for identification and stipulation, shall be deemed requests for admissions within Rule 36, F.R.C.P., and subject to the sanctions in this respect provided by Rule 37(c), F.R.C.P.

/s/ DAVID A. PINE, *Chief Judge*

PRETRIAL INSTRUCTIONS TO COUNSEL (EXCERPTS)

The following instructions to counsel governing pretrial proceedings have been adopted by the Court with a view to effecting the maximum narrowing of the issues in all cases prior to trial, with resulting expedition of trials.

In applying the instructions, counsel should bear in mind

the purpose of pretrial proceedings, and that to be effective pretrial requires the full cooperation of all attorneys. Any time which may be consumed by the Pretrial Examiner and counsel in conducting a thorough pretrial hearing, or be devoted by counsel to preparation for trial, not only saves an equivalent or longer period of time during the course of trial for the court, counsel, jury, witnesses, and parties, but also obviates unnecessary costs of trial which result to all concerned from delays which could have been avoided by a thorough pretrial.

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* * *

PRELIMINARY CONFERENCE OF COUNSEL; STATEMENT OF AGREED FACTS AND ISSUES OF FACTS AND LAW:

(a) Prior to filing with the Pretrial Examiner their pretrial statement, counsel for the respective parties should confer and, if at all possible, prepare a written joint statement * * *

1. * * *

In contract cases, all documents claimed to constitute the contract, the authenticity thereof, and the facts of execution. * * *

2. The contested issues of fact.

3. The contested issues of law.

4. A list of the documents or other exhibits as to which counsel will stipulate, and what will be stipulated as to each of them.

(b) In all cases involving extensive documentary evidence, counsel must, prior to pretrial hearing, confer with a view to being prepared to stipulate at the hearing, so far as possible, to the introduction of such documents, in the

interest of avoiding unnecessary prolongation of the pretrial hearing.

II. *Preparation for Pretrial Hearing.*

A. *Pretrial Statements of Parties:*

1. *In General:* Counsel for the respective parties *shall prepare* written pretrial statements. In every case such statement shall contain in concise form a concrete and precise outline of the party's version of the transaction or events out of which the claim or counterclaim arises, or his defense to such claim or counterclaim, including his contentions as to the facts and law. * * *.

2. *Particular Type of Action.* * * *

3. *Requests for Stipulations:* Each party shall include in his pretrial statement a list of stipulations of fact or genuineness of documents which he requests of opposing counsel.

4. *Requests for Further Discovery:* Each party shall include in his pretrial statement a request for any further discovery which he may desire prior to trial, such as medical examination or deposition.

5. *Estimate of Trial Time.* Counsel shall include a statement as to his estimate of the length of trial time his case in chief or defense will require.

6. *Filing and Service:* Pretrial Statements of counsel *shall be filed with the Pretrial Examiner and served upon opposing counsel at least forty-eight hours before the time fixed for pretrial hearing.* Pretrial statements in case

set for Monday shall be filed not later than the preceding Friday. * * *

B. *List of Exhibits to be Introduced at Trial.* Counsel shall submit at the time of pretrial hearing a list of all documents and other exhibits such party expects to offer at the trial, other than those to be used for impeachment or rebuttal, with a description of each document or exhibit sufficient for identification.

C. *Production of Documents and Other Exhibits at Pretrial Hearing*:

1. *In General*: Counsel shall produce at the pretrial hearing all documentary evidence, or copies thereof, and other exhibits to be introduced at the trial, for initialing by the Examiner and for such stipulation as to their introduction as opposing counsel may make.

2. *Particular Types of Actions*: The nature of the case will govern the type of documentary evidence or other exhibits to be presented. In the following types of action, if applicable, the documents and exhibits presented shall include, but not to be limited to, the following:

(a) * * *

(b) *Contract*: Any written contract relied upon. Any writing alleged to constitute a collateral agreement or misrepresentation of fact inducing the contract. Any writing affecting the obligations of the contract, such as amendments thereto, change orders, or correspondence or other writing effecting a waiver of covenant, etc.

* * *

3. *Depositions*: Each party shall produce any deposition intended to be used at the trial for other than impeachment purposes which is not part of the record in this Court, and shall indicate the portions of any deposition which he intends to use, whether it be in the record or not.

D. *List of Witnesses*: Each party should submit at the pretrial hearing a list containing the names and addresses of all witnesses whom he intends to use at the time of trial, except those who may be used for rebuttal or impeachment purposes. If practicable, such witnesses shall be classified as to the issue on which they will testify.

* * *

III. *Pretrial Hearing*:

1. *Hearing by Examiner or Judge*: Pretrial hearings will be conducted by the Pretrial Examiner under the direction and supervision of the Pretrial Judge or by the Pretrial Judge.

2. *Counsel*: Counsel appearing at pretrial should preferably be counsel who will try the case, but in any event he must be thoroughly familiar with the case and fully authorized to act and enter into stipulations. * * *

3. *Stipulations*: Counsel shall be prepared to stipulate at the pretrial hearing as many pertinent facts as possible, including, but not limited to, the agreed facts set forth in any joint statement prepared by them prior to the pretrial hearing, such as all formal facts of record and the authenticity and admissibility of documents or other exhibits.

4. *Pretrial Order*:

(a) *Contents*: The pretrial order will contain a

concise but specific statement of the respective parties' contentions of fact and law and a statement of special or other damages claimed or other relief sought, together with stipulations as to matters of fact, genuineness of documents, admissibility of evidence, or further discovery, and a statement as to any request by counsel to file a further motion or to amend his pleadings, with any special comment or recommendation which the Pretrial Examiner may deem appropriate. It shall be signed by the Pretrial Examiner and respective counsel.

(b) *Objections*: The order signed by the Pretrial Examiner will be the order of the court, unless, within five days from the date said order is signed by such Examiner, counsel for any party files with the Clerk of the Court written objections thereto and serves a copy thereof upon opposing counsel.

(c) *Hearing Before Pretrial Judge*: In the event objections to the pretrial order as signed by the Pretrial Examiner are filed timely, the objections will be set down for hearing before the Pretrial Judge to determine whether the order of said Examiner should be adopted as the court's order, whether it should be adopted by the court with amendments thereto, or whether a new pretrial order should be entered by the court.

5. *Other References to Pretrial Judge*:

(a) *Judicial Rulings*: If in any matter coming before the Pretrial Examiner it appears that a ruling or decision of the court is necessary or desirable, the matter will be referred by the Pretrial Examiner to the Pretrial Judge.

(b) *Amendments to Pleadings*: If at the pretrial hearing request is made by counsel for leave to amend his complaint or answer and opposing counsel does not object

thereto, the Pretrial Examiner may grant the request with the proviso that such amendment shall not interfere with the trial date of the case, and will note such action in the pretrial order. In the event opposing counsel objects to a requested amendment of the pleadings, the Pretrial Examiner will include in the pretrial order signed by him a statement of the request for leave to amend and objections thereto, and the matter will be referred to the Pretrial Judge. The Pretrial Judge will note his decision on the face of the pretrial order; and if leave to amend is granted, no further formal amendment of the pleadings will be required. If a requested amendment allowed by the Pretrial Judge over objection necessitates further discovery by opposing counsel, the Judge, at the time of allowing the amendment, will order the case removed from the Ready Calendar.

(c) * * *

(d) *Removal from Ready Calendar*: If in any case set for pretrial it appears to the Pretrial Examiner that the case is not in a posture for pretrial and should be removed from the Ready Calendar, he will so recommend and submit the matter to the Pretrial Judge for decision.

6. *Assignment for Pretrial*: Cases will ordinarily be set down by the Assignment Commissioner for pretrial hearing as they are reached on the Ready Calendar.

7. *Continuances*: Continuances will be granted only for good cause shown. * * *

IV. *Motions.*

1. If there is a motion pending in any case set

down for pretrial, the Pretrial Examiner will continue the pretrial until after disposition of such motion.

2. *Request for Further Discovery*: If at the pretrial hearing request is made by counsel for leave to take a deposition or to have a medical examination or other further discovery and opposing counsel does not object thereto, the Pretrial Examiner may grant the request with the proviso that such further discovery shall not interfere with the trial date of the case, and will note such action in the pretrial order.

3. *Request to File Motion*: If opposing counsel objects to requested further discovery or if counsel desires to file any other motion, he shall prepare such motion in writing and apply to the Pretrial Judge for leave to file it, pursuant to Local Civil Rule 11(f).

V. *Settlement Conferences*: * * *

VI. *Failure of Counsel to Comply with Instructions*:

1. *In General*: Failure to comply with these instructions may result in the case being stricken from the Ready Calendar or other sanction. Except for defaults as to which the Pretrial Examiner has been directed by the court to act, the Pretrial Examiner will report counsel's omission to the Pretrial Judge for decision as to sanction, if any, to be imposed.

2. *Failure to Appear for Pretrial Hearing*: If counsel for any party fails to appear when an action is reached in any call of the pretrial calendar before the Pretrial Judge, he may act as in case of non-appearance for final trial. If counsel for plaintiff fails to appear at the time

set for pretrial hearing before the Pretrial Examiner, the Examiner will enter the case dismissed for want of prosecution. *If counsel for the defendant fails to appear at the time set for pretrial hearing before the Pretrial Examiner, the Examiner will enter his default.*

3. *Failure to File Pretrial Statement. If any party fails to file a pretrial statement timely,* the Examiner will act as provided in the case of failure to appear for pretrial hearing. If either party fails to file an adequate statement, the Pretrial Examiner will pass the case for reassignment on a future date, at which time counsel shall file timely his amended pretrial statement.

4. *Failure to Produce Documents:* * * *

5. *Refusal to Stipulate:* Request for stipulations as to matters of fact or the genuineness of documents presented at pretrial for identification and stipulation will be considered requests for admissions within Rule 36, F.R.C.P. If counsel for any party refuses at the pretrial hearing to admit such matter of fact or to admit the genuineness of a document and the party requesting the admission thereafter proves the genuineness of such document or the truth of any such matter of fact, counsel for the latter may proceed as authorized by Rule 37(c), F.R.C.P.

VII. *Assistant Pretrial Examiner.* * * *

Approved by the Court:

/s/ DAVID A. PINE, *Chief Judge.*

January 29, 1960.

APPENDIX J

RULE 55. Default. * * * (FRCP)

(c) SETTING ASIDE DEFAULT. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

* * *

RULE 60. RELIEF FROM JUDGMENT OR ORDER. (FRCP)

* * *

(b) Mistakes; Inadvertence; Excusable Neglect; * * * On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move a new trial under Rule 59 (b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; * * * The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. * * *

(NOTICE OF ASSIGNMENT COMMISSIONER)
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Pretrial Statement Due 5/29/61

Washington, 5/17/1961

No. 1183-57

Calendar No. 4749½

(Jury Action)

Maddox

v.

Shroyer et al.

Will be called for pretrial hearing at 10:00 A.M. on 5/31/61 Pre-trial Examiner Room 2403

RICHARD L. COLLINS,
Assignment Commissioner.

(NOTICE OF ASSIGNMENT COMMISSIONER)
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Pretrial Statement Due 5/12/61

Washington, 5/2/1961

No. 1183-57

Calendar No. 4749½

(Jury Action)

Maddox

v.

Shroyer et al.

Will be called for pretrial hearing at 10:00 A.M. on 5/16/61 Pre-Trial Examiner Room 2403

RICHARD L. COLLINS,
Assignment Commissioner.

CLERK'S OFFICE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1183-57

Maddox

v.

Shroyer et al.

Dear Sir:

This is to advise you that the above-entitled cause was today calendared pursuant to order of 4/18/61

Date: 4/18/61

HARRY M. HULL, *Clerk*